# 341st CONS

*"Takin Care of Business"*

***Home of the Two-Time AFSPC Top Dollar Champions!***

# Claims

- Claims defined
- FAR Clauses
- Basis for Claims
  - Changes
  - Constructive Changes
  - Delays
  - Breach of Implied Duties
  - Mistake
- Allowable Compensation

# Claims

- Claim defined - FAR 33.201
  - “a written demand, as a matter of right”
  - seeking payment of a “sum certain” or adjustment or interpretation of contract terms
  - “arising under or relating to a contract”
  - certification required if over $100K
- Customer/requiring activity must be advised and involved
- CO required to respond w/i 60 days

# Claims

- Contract Clauses
  - FAR 52.233-1 Disputes (Contract Disputes Act of 1978)
  - FAR 52.243-1 Changes - Fixed-Price
  - FAR 52.243-4 Changes (used in construction contracts)
  - FAR 52.242-17 Government Delay of Work
  - FAR 52.242-14 Suspension of Work
  - FAR 52.236-2 Differing Site Conditions

# Claims

- The Changes Clause - FAR 52.243-1
  - The CO may, at any time, by written order, without notice to sureties make changes within the general scope of the contract in any one or more of the following:
    - Drawings and specs
    - Method of shipment or packing
    - Place of delivery

# Claims

- Changes - fixed-price
  - Contractor must assert its right to an adjustment within 30 days from receipt of a written order.

- What if -
  - No written notice from contractor is received within 30 days?
  - No written order is given?
  - Change is outside the general scope of contract?

# Claims

- Constructive Change Doctrine
  - Any oral direction, instruction, interpretation or determination which can be reasonably construed as a change to the contract.

- What if -
  - The oral directive comes from someone other than a CO?

# Claims

- Changes Clause-Construction FAR 52.243-4
  - The CO may, at any time, without notice to sureties, ***by written order designated or indicated to be a change order***, make changes within the general scope of the contract, including:
    - Drawings and specs
    - ***Method or manner of performance***
    - ***In GFP, GFM or site***
    - ***Acceleration in performance of the work***

# Claims

- Changes Clause - Construction
  - Provides for adjustment based on oral "direction, instruction, interpretation or determination."
    - Contractor must provide written notice that it considers the action to be a change
    - No adjustment shall be allowed for costs incurred more than 20 days before Contractor's written notice to CO, ***except for an adjustment based on defective specs.***

# Claims

- Impact Under Changes Clause
  - "If any change increases or decreases a contractor's cost of, or time required for, performance . . . the Contracting Officer ***shall*** make an ***equitable adjustment*** in the contract price, the delivery schedule, or both, and ***shall*** modify the contract."
    - Profit included

# Claims

- Equitable adjustment
  - What is it?
  - Claim?
    - Failure to agree to an adjustment shall be a dispute
    - Contractor required to continue performance
  - Certification required?
  - DFARS 243.2

# Claims

- Impact under delay of work clauses
  - An adjustment to the cost of performance (excluding profit) and delivery or performance dates

# Claims

- Differing Site Conditions - FAR 52.236-2
  - Allows for additional compensation when subsurface or unknown latent physical conditions are experienced that differ materially from those indicated in the contract.
  - Contractor must notify the Contracting Officer before conditions are disturbed.

# Claims

- Claims for Breach of Contract
  - Breach of  implied duties
    - Cooperation
    - Good faith and fair dealing
    - Implied warranty of adequacy of specifications
  - Cardinal Changes

- Claims for Mistake
  - Unilateral vs. Bilateral

# Claims

- Modifications in Settlement of Claims
  - Must include release language
  - Must have legal review and approval regardless of dollar value

# Claims

- What if -
  - Contractor submits a legally deficient claim?
  - Contractor submits an unsupported claim?
  - Contractor understates cost impact and we know it?

# Claims

- Conclusion
  - Evaluate:
    - Has a claim been submitted?
      - Are all legal requirements present?
    - Has adequate supporting data been submitted?
    - Has customer/requiring activity evaluated the claim?
    - Has a valid basis for a claim been alleged?
    - Has SJA reviewed claim?
    - Does modification include release & satisfaction?